

Report on Compliance of Protection against Harassment of Women at the Workplace Act of 2010

Background and Scope

The undersigned legal advisors and representatives were engaged in the month of May 2019 by the management of “SOCH”, a non – profit organization working towards creating content on issues of social justice, describing itself as a “bilingual news-community” on various social media platforms. From the information available through interviews conducted for the exercise in question, it appears that majority of the organization’s is the production of videos comprising interviews with individuals and other forms of highlighting social, civic and human rights violations and concerns. The organization operates as a sister organization of a group of companies comprising ABM Info Tech Pvt. Ltd., Binary Vibes Pvt. Ltd., in Karachi, as well as Engage and Shehri in Lahore, among others. The organization currently has the strength of 15 producers and editors, and 2 persons in full time senior management. Resources such as HR management are utilized from the other companies of the group, and for a considerable period of time after beginning its operations, the SOCH team was also housed within the office of ABM Info Tech Pvt. Ltd. A part time producer and one co-founder of the organization also contribute to the team from the city of Lahore.

By way of the exercise at hand, the undersigned were to assess the compliance of the organization with the Harassment at the Workplace Act of 2010 (“the 2010 Act”), and make recommendations as to improvement in its implementation, and handling of harassment claims. The undersigned undertook this exercise through interviews with all of the production, editing and managerial staff of the organization, as well as former employees.

Purview of the 2010 Act and Requirements

The 2010 Act defines harassment, by virtue of Section 2(f) thereof as,

“...any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment”

The definitions of employer and employee have been made broad enough under the statute to cover almost every kind of formal or informal employment, regardless of the size of the organization. Certain specific responsibilities have also been placed upon employers, which may be enumerated as follows:

i. Formation of an Inquiry Committee

Section 3 of the 2010 Act mandated that every organization, within thirty days of the commencement of the Act, forms an Inquiry Committee. The employer/organization is permitted to co – opt for one or more of the three members of the Committee to be from outside the organization. The Committee is required to have a Chairperson. It is pertinent to mention that the formation of the Committee is not contingent upon a complaint of harassment coming forward; the mechanism for adjudicating a complaint if any, i.e., the Committee, is required to be in place even before any official complaints of harassment

The Code of Conduct prescribed by the Act, also provides for a mechanism of informal complaints and resolution of the same, however, the same does not substitute the requirement of having a committee in place.

ii. **Appointment of Competent Authority**

The Competent Authority has been more loosely provided for in the Act. Section 2 (d) merely defines the Authority as “the authority as may be designated by the management”. Section 4, however, states that the Inquiry Committee upon concluding its findings, is to recommend the actions to be taken to the Competent Authority. As such, it appears that the Competent Authority is the enforcement personnel within the organization for the decision reached by the Inquiry Committee. As the Act does not prescribe the composition of the Competent Authority, it appears that even a single person from within the organization may be assigned to fulfill this role.

iii. **Implementation of the Act**

To implement the 2010 Act, the organization would need to take the above measures and would also have to ensure that the Code of Conduct which forms part of the Act is incorporated within its management policies. Additionally, the organization is required to ensure that the Act itself is displayed at a conspicuous place within the workplace in English as well as another language understood by most of the employees.

Method of evaluation/assessment at SOCH

The undersigned conducted the present exercise at the office of SOCH/ABM Info Tech Pvt. Ltd. at Beaumont Plaza, Karachi primarily over the 9th, 10th and 11th of May, 2019 (and partly with interviews conducted over telephone thereafter.) The exercise was initiated with a meeting with the senior management of SOCH as well as the HR personnel (borrowed resource from other companies in the group) to discuss the purpose of conducting the instant assessment. The undersigned also met briefly with the entire team of SOCH together to discuss, briefly, what their views are on harassment. The undersigned also briefly apprised the team about what constitutes harassment under the 2010 Act and the rights of employees under the same. A questionnaire was prepared for the purpose of individual interviews with the team and was disseminated beforehand to assuage any apprehensions regarding the individual interviews and to also give the team an opportunity to come prepared with their answers

In the interest of clarity, the questionnaire is reproduced as follows:

1. How long have you been working at SOCH?
2. Can you describe your designation and duties, who do you report to, do you work independently or in a team?
3. do you feel comfortable working alone in your office space
4. Do you feel that your workplace has a gender-inclusive culture? Why or why not?
5. Have you ever felt harassed or witnessed a colleague getting harassed at your workplace?
6. Do you think it's harder for women to succeed in your workplace? Why or why not?
7. Do you think it's easier for men / women in your workplace who are similarly situated (professionally) to advance in the profession than it might be for you?
8. Do you think your workplace makes assumptions about people's capabilities based on gender and family responsibilities? If yes, can you give some examples?
9. Has a male /female colleague, management or senior management ever:
 - a. Said anything to you or about women in front of you that made you feel uncomfortable or embarrassed? (For example: patronizing remarks about women, unwelcome comments or suggestions, jokes of a sexual nature, sexist comments etc.)
 - b. Done anything to you or to others in front of you that made you feel uncomfortable or embarrassed? (For example: unwanted sexual attention of any kind, standing too close, inappropriate touching or harassment etc)
 - c. if yes to above — have you ever felt pressured or coerced in any way to work with a colleague that has history of making earlier mentioned comments?
 - d. have you ever made a complaint to management about said comments / harassment/ jokes etc
10. Do you have anything else to add?

A similar questionnaire was prepared for management members of the organization, which is reproduced as follows:

1. What is your position at Soch?
2. How many people do you manage?
3. Does the workplace has a gender-inclusive culture? How do you ensure that it does?
4. Do you think it's harder for women to succeed in your workplace? Why or why not?
5. How is your workplace is accommodating towards women in its policies and working culture?
6. Are women's opinions valued and listened to in team discussions?
7. Do you think your workplace makes assumptions about people's capabilities based on gender and family responsibilities? If yes, can you give some examples?
8. Do you think that employees feel comfortable working alone in your office space? What measures have you taken to ensure safety?
9. Have you ever felt harassed or witnessed a colleague getting harassed at your workplace?
10. Has there been a case of harassment brought to your notice? What procedure is followed for harassment cases? Do you think the case was handled appropriately? What remedial action was taken to address the situation?
11. Has a male /female colleague, management or senior management ever:
 - a. Said anything to you or about women in front of you that made you feel uncomfortable or embarrassed? (For example: patronizing remarks about women, unwelcome comments or suggestions, jokes of a sexual nature, sexist comments etc.)
 - b. Done anything to you or to others in front of you that made you feel uncomfortable or embarrassed? (For example: unwanted sexual attention of any kind, standing too close, inappropriate touching or harassment etc)
12. Has a complaint ever been made to you about such jokes/comments/harassment
13. How would you deal with an informal complaint

Findings

Following the meetings with the management at the start of the exercise, the team discussion and individual interviews with both the team members and the management, the following are the apparent findings on which the undersigned have based their recommendations, which will be provided further in this report:

1. At the start of the exercise, it seemed that there was a grave concern among management due to accusations which had been made publicly by a former employee to the effect that she had been harassed during her time at SOCH, and that the perpetrators of harassment had been given protection. The management appeared to be of the view that having an independent assessment conducted of whether the organization in fact supports harassment or not would put the minds of its own members at ease, and may also help in defending itself against claims of harassment.
2. There appeared to be considerable apprehension on the part of management, almost an expectation that employees would be quick to label "non – harassment things" as harassment, for instance, being told to stay late for meeting a work deadline as harassment. There were also views that the team at SOCH was unlikely to have the issue of not knowing when to speak up or who to speak to, and on the contrary the converse problem of people "outing" each other, even on social media, when faced with a problem.
3. The interviews with employees, however, portrayed a mostly positive outlook of the organization on all fronts. Gender inclusivity, it was almost unanimously agreed, was a factor in which SOCH was far ahead of other media/tech organizations. The management was found by most employees to be accommodating, approachable and reasonable in terms of work hours, work load etc. For the most part, employees also reported a common sense of respect among each other, and avoidance of any kind of verbal communication that may be

sexist, of a sexual nature and offensive, portray or support gender bias etc. Some employees did mention though that currently the team is very small and, hence, things are manageable. With expansion though, complications increase and the organization may not have the structures in place at present to handle them. Concerns were also raised that perhaps employees from a more privileged social background have stronger ties with management, and the rest do not enjoy the same recognition of their efforts.

4. However, dissatisfaction has been expressed by some current and former employees over the manner in which a previous complaint of harassment was dealt with. It may be mentioned though, that this particular incident or complaint was mentioned by majority of the interviewees but very divergent views had been expressed. While many of the later employees were of the view that a colleague of theirs had been heinously accused of something they do could not expect from him, others were of the view that the complainant may have had a fair reason to complain and organizationally her issue was treated as a personal one and trivialized.
5. The present exercise cannot subsume the role of an Inquiry Committee and give any findings on the factual events. Any findings or recommendations also must take into account that the entire episode has been narrated in a completely different manner each time, depending on the person narrating them. It is, therefore, difficult to state with certainty that the complainant of the previous incident was or was not met with trivialization of the alleged incident, was treated fairly etc. The complainant, as per different reports, was offered the option of an Inquiry Committee being formed but narrations differ as to the point in time when such offer was made. By some accounts, too much time had passed for the effort to be meaningful, by others the offer was made at the very start but it was due to the complainant's insistence alone that the committee could not be constituted despite repeated offers and assurances (and also being counseled that no action could be taken without going through the process), and by yet others, the complainant was made to believe that she would not have enough proof for any fruitful conclusion to the Inquiry. Some efforts appear to have been made to separate the two individuals to avoid further conflict but, by some accounts this led to the complainant facing internal resistance and animosity, while according to others the person accused had been treated rather harshly and isolated from his entire team.
6. It emerges from the above that the lack of an Inquiry Committee having been constituted before the event took place, and being equipped with the necessary skill of handling the event, led to a spiraling of events that left many people within the organization, as well as the complainant herself and the accused, in considerable distress. While the complainant is stated to have refused the constitution of a committee, the 2010 Act requires the constitution thereof regardless of there being an existing complaint. It may have helped the situation if the committee was constituted as soon as was possible, at least after receiving the complaint, if not specifically to hear the aforementioned complainant, but to carry out its purposes under the Act, to hear out future complaints etc. As the Act gives the option of including more than one member from outside the organization, it may have been mutually beneficial for the complainant to have had the ability to report the incident, and seek action, from a person other than her only two supervisors with whom she worked very closely, along with the accused. A neutral person being available for approaching with the complaint, and the option to withdraw it any time if she did not want to proceed, may have helped in less internal tensions being created. Whether or not the complainant's complaints were reasonable, or the manner in which she handled them, it is not unreasonable or entirely unexpected for her to have felt that her raising of the complaint had affected her working relationship with either one of her supervisors. Her supervisors, too, whilst having only the best intentions towards her, could not be reasonably expected to be completely equipped with handling the situation.
7. Another rather concerning matter which arose was the lack of an avenue of complaints for an employee who does not enjoy a close relationship with the management, or whose own work relationships are already strained. During the course of interviews, it transpired that a female employee had experienced unwanted, unmistakably deliberate and inappropriate physical contact from a male colleague, at a corner of the office where no one else at the time could have seen the incident. Not being too well acquainted with one member of the

management, and having sensed hostility from another, the employee did not feel that the space for making a complaint was available. There was also apprehension that a formal complaint made may result in action, such as dismissal of the male colleague, however, she would not be given a voice in how the matter should be handled, i.e., whether a lesser punishment would suffice, whether a training with all employees on office conduct, relationships etc would be a more feasible option. Again, an already existing Inquiry Committee, would have mitigated the adverse effects suffered by the female employee.

8. Some concerns were also raised that gender sensitivity trainings had been mentioned/promised at different times by the management but there seemed to be no efforts to follow through on the same.
9. The 2010 Act did not appear to be displayed at either the office of SOCH or ABM Info Tech Pvt. Ltd., however, it had been displayed earlier in time, according to some management and team members.
10. The HR personnel appear inclined towards the view that complaints of harassment are more likely to be based on “non – harassment”, or a result of female employees not maintaining boundaries, rather than being genuine complaints. Some team members also mentioned unbecoming comments having been made by senior management regarding publicly known cases of harassment accusations.
11. Some employees also raised concerned regarding undue time taken for resolution of difficulties, or putting into effect measures which it has been discussed with the team will be implemented. A harassment policy was mentioned as one example, however, it was seen as an overall problem, and owing only to a lot of preoccupation at the senior management level, as opposed to anything ill intended.

Recommendations

- i. The most apparent necessity from the foregoing appears to be the constitution of an Inquiry Committee and a Competent Authority, for the dealing of future complaints and grievances. Neutral members/persons from outside the organization would be beneficial in avoiding biases while hearing complaints. This may also help tackle the problem of internal differences arising between employees and management, as the management would be able to separate itself from the proceedings and conclusion of the harassment claims and, thereby, whether it dealt with the complaint in a fair manner. The complainant may also be less likely to apprehend that her raising a complaint has affected her internal work relationships with management while the proceedings are underway, or that the management view her any differently, or subject her to any hostility as a result thereof.
- ii. Trainings with staff on what constitutes harassment, as well as how one should deal with harassment when finding oneself subjected to the same are strongly advised. Such trainings may cover how to recognize harassment, understand abuse of authority, misogynistic and sexist attitudes which interfere with work performance, difference between formal and informal complaints, when should something be serious enough to make a formal complaint, and how to deal with a situation when harassment is seen, but the person effected is not willing to make the complaint themselves. This could help in not only making everyone aware of their rights, what protections the law provides, but also in brining team members and management on the same page as to the organization’s future course of action for all matters related to harassment.
- iii. Sensitization trainings with all HR personnel, whether within SOCH or a borrowed from companies within the group, to dispel pre-conceived notions about women faking harassment complaints, or having led themselves into the situation complained of, by being involved with male members. All management personnel would also benefit from such training.

- iv. Displaying code of conduct at the offices of the organization is necessary, as required under the Act. This would also give employees a sense of security in knowing the organization's commitment to issues of harassment.
- v. A harassment policy being developed was mentioned by staff and management members alike. A policy, by any nomenclature, needs to incorporate the Code of Conduct provided within the 2010 Act, as prescribed by the Act itself. This Code of Conduct is also important as it provides the mechanism for informal complaints, and is informative for employees as well on what constitutes harassment, by way of examples and illustrations.
- vi. Employee concerns regarding timely resolution of general complaints, due to a lot of preoccupation on the senior management, could be resolved through setting up an internal committee, or even a single person, designated with receiving employee grievances and finding a resolution to the same by working with management. While this recommendation is not strictly harassment related, however, it may be helpful in implementing the policy through which the organization incorporates the 2010 Act, including dealing of informal complaints. The formation of such a committee, or even a single person designated with receiving such complaints, may also be beneficial for cases which may not be severe enough to constitute harassment, but may be sufficient to constitute a misconduct complain.
- vii. All complaints received, offers made to provide support, and any proceedings of harassment complaints or other grievances, need to be documented for future reference. This will also assist where, in future, accusations are made of poor management of issues. Additionally, this would allow the management to do some introspection as to how matters could have been handled better, if at all, and to take rectification measures.

Sd/-

Uzma Farooq

Sd/-

Zahrah Vayani